

Defendants recite the final paragraph of the *Castle Rock* decision, which references the Court's decision in *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989). While some of Plaintiffs' federal claims arise from the substantive due process protections provided by the Fourteenth Amendment, those claims are not "*DeShaney*-style claims"—that is, Plaintiffs do not allege that Defendants created or enhanced a particular danger, resulting in injury. A review of Plaintiffs memoranda opposing Defendants' motions for summary judgment reveals that the word "*DeShaney*" is absent from those filings. This case is also not about the failure of a police officer or department to arrest someone for a crime or to investigate that crime. Instead, Plaintiffs' claims arise from Defendants' cover-up of evidence that should have revealed the identity of the murderer of Plaintiffs' mothers.

The Supreme Court's decision in *Castle Rock* was not unexpected. Gonzales was proffering a novel claim, the purpose of which was clearly to avoid the harsh rule of *DeShaney*.¹ Neither the facts of the case nor its legal conclusions shed any light on the proper resolution of Plaintiffs' claims in the instant case. Because Plaintiffs have articulated claims under both the substantive due process and equal protection clauses of the Fourteenth Amendment, Defendants' motion for summary judgment should be denied.

Respectfully submitted,

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¹ See *DeShaney*, 489 U.S. at 213 (Blackmun, J., dissenting) ("It is a sad commentary upon American life, and constitutional principles--so full of late of patriotic fervor and proud proclamations about 'liberty and justice for all'--that this child, Joshua DeShaney, now is assigned to live out the remainder of his life profoundly retarded. Joshua and his mother, as petitioners here, deserve--but now are denied by this Court--the opportunity to have the facts of their case considered in the light of the constitutional protection that 42 U.S.C. § 1983 is meant to provide.").

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Certificate of Service

I hereby certify that on July 12, 2005, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to all parties for whom counsel has entered an appearance by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Alphonse A. Gerhardstein